

## CHAPTER NO. 728

## SENATE BILL NO. 243

**By Miller, Curtis S. Person, Jr., Fowler, Ford, Dixon, Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kilby, Kurita, Kyle, McLeary, McNally, Norris, Ramsey, Southerland, Trail, Williams, Mr. Speaker Wilder**

**Substituted for: House Bill No. 861**

**By Bunch, Russell Johnson, Black, Rowland, Stanley**

AN ACT to amend Tennessee Code Annotated, Title 36; Title 37; and Title 71, relative to administrative adjustments to child support orders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-5-103, is amended by deleting subsection (f) in its entirety and by substituting instead the following:

(f)(1)(A) Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to Title 71, Chapter 3, Part 1, upon the request of the department or upon the request of the custodial or noncustodial parent, or of any other caretaker of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act, the department shall review, and, if appropriate, seek an adjustment of the order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. If at the time of the review, there is a "significant variance", as defined by the department's child support guidelines, between the current support order and the amount that would be ordered under the department's child support guidelines, the department shall seek an adjustment of the order.

(B) In the case of a request for review that is made between three-year cycles, the department shall review, and, if the requesting party demonstrates to the department that there has been a substantial change in circumstances, the department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subsection, a "substantial change in circumstances" shall be a "significant variance", as defined by the department's child support guidelines, between the amount of the current order and the amount that would be ordered under the department's child support guidelines.

(C) The review and adjustment in subdivisions (1)(A) and (B) may be conducted by the court, or by the department by issuance of an administrative order by the department or its contractors.

(2) As an alternative to the method described in subdivision (1) for review and adjustment, the child support order may be reviewed, and the order may be adjusted by an administrative order issued by the department or its contractors by:

(A) Applying a cost-of-living adjustment to the order in accordance with a formula developed by the department; or

(B) Using automated methods, including automated comparisons with wage data to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment based upon a threshold developed by the department.

(3) The methods for adjustment of orders of support by issuance of an administrative order pursuant to this section shall be promulgated in the department's rules.

(4) The department shall give written notice to the obligor and obligee that a review of the order of support has been initiated.

(5) The department shall give written notice to the obligor and obligee of the review findings. If the department elects to seek the adjustment of the support order by issuance of an administrative order instead of by judicial order, notice of the proposed administrative adjustment to the order of support shall be sent to the last known address of the obligor and obligee thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support pursuant to the same procedures for service of administrative orders described in § 36-5-807.

(6)(A) The obligor and obligee shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing notice of the hearing to the department by copy of such motion.

(B) The review by the court shall be completed within timeframes established by federal law.

(C) If the obligor or obligee contests the proposed administrative adjustment pursuant to the procedure in this subdivision, no further administrative appeal to the department shall be available, and further appeal of the modified support order entered by the court shall be made pursuant to the Tennessee Rules of Appellate Procedure.

(7) If the obligor or obligee does not contest the proposed administrative adjustment to the order of support within thirty (30) calendar days of the mailing date of the notice of the proposed adjustment pursuant to the provisions of

subdivision (6), the department shall issue the administrative order adjusting the order of support.

(8) A copy of an administrative order of adjustment of the child support order shall be sent to the clerk of the court that has jurisdiction of the child support order which has been administratively adjusted and it shall be filed in the court record. A copy of the order shall be sent to the obligor and the obligee by the department by general mail at the last known address shown in the department's records.

(9) If an order of support is adjusted by administrative order of the department pursuant to subdivision (7), the obligor and obligee shall have the right to administratively appeal the adjustment by requesting the appeal to the department as provided in Part 10 of this chapter. The obligor or obligee may request a stay of the administrative order pursuant to the provisions of the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5. The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order and shall be subject to the scope of review as provided pursuant to the provisions of § 36-5-1003.

(10) Notice of the right to request a review, and, if appropriate, adjust the child support order shall be sent to the obligor and the obligee by the department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.

(11) The requirement for review and adjustment may be delayed if the best interests of the child require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

SECTION 2. This act shall become effective upon becoming law for purposes of rulemaking, and shall become effective for all other purposes on January 1, 2005, the public welfare requiring it.

**PASSED: May 5, 2004**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 24<sup>th</sup> day of May 2004**

  
PHIL BREDESEN, GOVERNOR